

Missouri's Second Injury Fund

Missouri Division of Workers' Compensation
P.O. Box 58
Jefferson City, MO 65102-0058



Missouri Department of
Labor and Industrial Relations
**DIVISION OF
WORKERS' COMPENSATION**

premiums for self-insured employers. As a result of the changes to the law in 2005, SB1 and SB130, the surcharge rate has been capped at 3% and can be reduced or suspended when the balance in the Fund exceeds a certain amount.

Contacts For Information

Missouri Division of Workers' Compensation
Second Injury Fund Payment Processing Unit
P.O. Box 58
Jefferson City, MO 65102-0058
(573) 526-4963 or (573) 526-3543
www.dolir.mo.gov/wc

Office of Attorney General
P.O. Box 899
Jefferson City, MO 65102-0899
(573) 751-3321

Toll-Free EMPLOYEE Help Line
1-800-775-2667

Toll-Free EMPLOYER Help Line
1-888-837-6069

instance will reevaluate the case when additional information is made available.

2. As in other workers' compensation cases, the Second Injury Fund or employee may request an evidentiary hearing to determine whether the employee is eligible for the benefits being sought. Eligibility for benefits is determined by medical evidence.
3. After an evidentiary hearing is held, the Missouri Attorney General's office on behalf of the Second Injury Fund or the employee, may appeal the award entered by an Administrative Law Judge to the Labor and Industrial Relations Commission (LIRC). A decision by the LIRC may be appealed to the Missouri Court of Appeals and thereafter to the Supreme Court.

How Payments Are Made

After the claim against the Second Injury Fund is resolved either by parties entering into a Stipulation for Compromise Lump Sum Settlement or based upon a Final Award entered by the Administrative Law Judge, the Division's Technicians in Jefferson City will requisition the payments from the Office of Administration. The payments may be lump sum settlements or weekly lifetime benefit payments on permanent total disability/death cases. Payments for medical bills may also go directly to the medical providers in uninsured employer cases. All attorney's fees and applicable liens are deducted prior to the final payments made in the case. Direct deposit into the employee's bank account is a service available to claimants receiving lifetime benefits.

Financing the Fund

The Second Injury Fund is financed by a surcharge on employers' workers' compensation premiums and equivalent

In 1943, the Workers' Compensation Law was amended to benefit the physically handicapped and individuals with a previous workplace-related disability. The amendment helped employers by limiting liability to only the current injury that results in permanent total disability. The Second Injury Fund encourages employment by permitting persons to be employed without exposing employers to any liability for previous disabilities.

When an employee sustains a compensable work injury and the combined effect of the work-related injury and prior disability results in permanent total disability, or increased permanent partial disability, the employer at the time of the last injury, is liable only for compensation due from the most recent injury. The remaining compensation owed to the employee is paid from the Second Injury Fund.

The Missouri State Treasurer's Office is the custodian of the Second Injury Fund. The Missouri Attorney General's Office defends the claims made against the Second Injury Fund.

There are five (5) benefit categories available from the Second Injury Fund.

They are:

1. Disability Benefits.

- a. **Permanent Partial Disability (PPD).** An employee must have a permanent pre-existing disability combining with the work injury to create greater disability to trigger Second Injury Fund liability. In order for an employee to recover from the Fund, minimum threshold limits regarding both the pre-existing and work related disability must be met. The employee must have disability that exceeds fifty (50) weeks of the body as a whole, or fifteen percent (15%) of the major extremity.
- b. **Permanent Total Disability (PTD).** If the last work-related injury makes the injured worker permanently and totally disabled, then the Second Injury Fund has no liability. However, the Second Injury Fund is liable for permanent total disability when the

combined effect of the work injury and the prior disability render the employee unemployable in the open labor market. The employer is liable only for the compensation for the most recent injury and the Second Injury Fund pays the remaining lifetime benefits.

2. Death Benefit.

Payments are only made for cases involving the death of an employee while working for an uninsured employer. Burial expenses and death benefits in the form of weekly payments to the surviving spouse or dependents of the deceased are paid from the Second Injury Fund. Benefits may be administered by a lump sum settlement or ongoing weekly payments to dependents.

3. Rehabilitation Benefits.

These benefits are to restore the seriously injured to a condition of self-support and self-maintenance through rehabilitation. Serious injuries that may qualify for rehabilitation include: quadriplegia, paraplegia, amputation of the hand, arm, foot or leg, atrophy due to nerve injury or non-use, and back injuries not amenable alone to recognized medical and surgical procedures.

Upon order of the Director of the Division of Workers Compensation, the employee will receive forty dollars (\$40) per week for up to twenty (20) weeks only for the period the employee actually attends physical rehabilitation. Although unusual, this may be extended by special order of the Division of Workers Compensation for up to twenty (20) additional weeks for a maximum of 40 weeks. The injured worker only receives the benefit from the Second Injury Fund if he/she attends therapy as ordered by the physician at a facility that is certified by the Division. This does not mean that the employee cannot be rehabilitated in other facilities. However, the employee is not eligible to receive this benefit if the employee uses a facility not certified by the Division.

The Division generally initiates physical

rehabilitation benefits after a review of the injury and medical reports. The Division receives many referrals from case managers, attorneys and physical therapists.

4. Indemnity (for lost wages from a second job).

This benefit applies to injuries after August 28, 1998. The employee must be injured on the job with his first employer. If the employee is unable to work at a second job as a result of the injury, these benefits for the loss of wages from the second job may be claimed from the Second Injury Fund.

The employee should contact the Division's Toll-Free Employee Hotline, 800-775-2667, to request claim forms. The Missouri Attorney General's Office will review the claim to determine if benefits should be voluntarily paid. If the benefits are disputed, the employee should contact the Division's local Workers' Compensation adjudication office to request a docket setting.

5. Medical expenses for injured employees of uninsured employers.

The Second Injury Fund is also responsible for payment of medical bills of injured employees' when the employer fails to insure its workers' compensation liability as required by law. Generally, the uninsured employer and the Second Injury Fund are liable for the medical care and expenses. The Second Injury Fund is entitled to reimbursement against the employer as required by law. The Missouri Attorney General's Office would institute the appropriate action against the employer to recover the monies paid from the Second Injury Fund as set forth in §287.220 (5) RSMo. The Division's Fraud & Noncompliance Unit investigates allegations of an employer's failure to insure its workers' compensation obligations and appropriate cases are referred to the Attorney General's office for prosecution.

How To Apply for Benefits

Only the employee, the employee's attorney or the employee's dependent can file a claim against the Second Injury Fund. Employees may hire their own attorney to represent their interests when filing for benefits. An employer incorporated as a limited liability company, corporation, or is designated as a partnership must be represented by an attorney. Likewise, insurance companies are corporations and are represented by attorneys.

A claim against the Second Injury Fund is made by filing an approved Division Form WC-21 Claim for Compensation, indicating which Second Injury Fund benefits are being sought. If Form WC 21 is filed against the Second Injury Fund based upon a pre-existing disability, the employee needs to complete the date of previous injury or disease, the part(s) of the body affected by the previous injury or disease as well as state whether partial or total benefits are being sought.

There are limits to filing a claim against the Second Injury Fund. A claim against the second injury fund must be filed within two years after the date of the injury or within one year after a claim is filed against an employer or insurer, whichever is later.

What Happens After a Claim is Filed

1. The Missouri Attorney General's Office has thirty days (30) to file Form WC-22 Answer to the Claim for Compensation after the Division acknowledges receipt of the claim. The Answer will either admit or deny the allegations or statements made in the claim. The Second Injury Fund may also state that it lacks information to admit or deny the statements made in the claim and in this